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TAX APPEAL BOARD OF THE STATE OF DELAWARE

ESTATE OF PHILIP DiEGIDIO,)
Deceased, by JACINTA T. DAVIS)
and ANTHONY P. DiEGIDIO, Co-)
Executors,)

Petitioners,)

v.)

) Docket No. 715

DIRECTOR OF REVENUE,)

Respondent.)

Before: Joseph S. Yucht, Esquire, Chairman; James C. Eberly, Sr.,
Esquire, Vice-Chairman; Nettie C. Reilly, Cyric W. Cain,
Jr., and Harry B. Roberts, Jr., Members

Thomas J. Healy, Jr., Esquire of Healy & Collins,
Attorney for Petitioners.

John R. Ferrick, Esquire and John P. Fedele, Esquire
Deputy Attorneys General for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Esquire: This appeal by Jacinta T. Davis and Anthony P. DiEgidio, Co-Executors of the Estate of Philip DiEgidio (hereinafter "Petitioners") from a Notice of Assessment by the Director of Revenue requires us to construe a statute, 30 Del. C. §1305. The issue presented is solely one of statutory construction and is one of first impression.

The pertinent statutory provision, 30 Del. C. §1305, reads:

"§1305. Jointly Owned Property

The gross estate shall include the value of all property to the extent of the interest therein

held as joint tenants by the decedent and any other person, or as tenants by the entirety, or deposited with any banking institution or depository in the joint names of the decedent and any other person and payable to either or the survivor, except such part thereof as may be proved to have originally belonged to such other person or never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, nevertheless, for up to \$200,000 of the value of real property held by the decedent and his or her surviving spouse as tenants by the entirety and other personal property jointly owned by the decedent and his or her surviving spouse, one-half the value of such property shall be conclusively presumed to have been acquired from the decedent by the surviving spouse for an adequate and full consideration in money or money's worth."

The facts in this case were stipulated and agreed to as follows:

1. Decedent Philip DiEgidio died on June 4, 1977, leaving Mary L. DiEgidio as his surviving spouse.
2. At the time of his death, decedent and his spouse owned a joint bank account with a balance of \$151,576.96.
3. Included in said amount of \$151,576.96 was the sum of \$150,000.00 which was "solely owned" property of decedent's surviving spouse and therefore was excluded from the gross estate pursuant to 30 Del. C. §1305.
4. After deducting said exclusionary amount there remained the sum of \$226,756.81 of jointly held property in said estate.
5. The Petitioners then applied the conclusive presumption portion of 30 Del. C. §1305 and further excluded or deducted the sum of \$100,000.00 from decedent's estate.
6. The Director of Revenue (hereinafter "Respondent") objected to this "second" exclusion and based upon said objection,

calculated that said exclusion caused a deficiency in the inheritance tax paid in the amount of \$3,449.12, and filed a Notice of Assessment for said amount and also assessed interest in the sum of \$413.89.

7. Petitioners appealed to this Board from said Notice of Assessment.

The issue presented to this Board is whether the Petitioners are permitted, pursuant to 30 Del. C. §1305 to exclude from decedent's gross estate both property for which a surviving spouse has proven contribution, and also up to one-half of \$200,00 of all other jointly owned property held with the surviving spouse? We conclude that Petitioners are entitled under 30 Del. C. §1305 to exclude from decedent's gross estate both property for which a surviving spouse has proven contribution and also up to one-half of \$200,000 of all other jointly owned property held with the surviving spouse.

Prior to August 5, 1976, 30 Del. C. §1305 provided in relevant part:

"Whenever property, real or personal, is held in the joint names of 2 or more persons or is deposited in banks or other institutions or depositories in the joint names of 2 or more persons and payable to either or the survivor, upon the death of 1 of such persons, the right of the surviving joint tenant, tenant by the entirety or other such person to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant, joint depositor or tenant by the entirety had been devised or bequeathed to the surviving joint tenant, tenant

by the entirety or person, by such deceased joint tenant, tenant by the entirety or joint depositor by will, excepting therefrom such part thereof as may be proved by the personal representative of the decedent or by the surviving joint tenant or tenant by the entirety or other such person not to have been received or acquired from the decedent for less than adequate and full consideration in money or money's worth."

Effective August 5, 1976 the General Assembly amended §1305 in two significant respects. The gross estate of a decedent was altered as follows:

A. A distinction was now drawn between the types of surviving joint tenant in that a special conclusive presumption was established for a surviving spouse, and

B. The exclusion from the gross estate of property proven to have originally belonged to a surviving joint tenant was added.

Property proven not to have been received or acquired by the survivor from the decedent for less than adequate or full consideration in money or money's worth was retained as being excludable from the estate. The Respondent has argued that the amended statute did not provide for any additional exclusion but rather eliminated the necessity of proving contribution for up to one-half of \$200,000 of property held jointly with a surviving spouse. This contention is based on Respondent's argument that the rules of statutory construction require that tax exemption statutes are to be given a strict interpretation against the assertions of the taxpayer and in favor of the taxing power. Therefore, the Petitioners can not exclude that which the survivor solely owned and also obtain \$100,000 of property through the conclusive presumption. We can

not agree with this argument.

We think the legislative interest was as contended by Petitioners in that married couples would receive a more favorable inheritance tax treatment than unmarried joint tenants. Any joint tenant, whether married to the decedent or not, would be able to exclude from the gross estate, all property which originally belonged to the surviving joint tenant. Then the legislature added the exclusionary provision that only pertained to surviving spouses, a so called marital exclusion. It does not appear that the section intended to eliminate the prerequisites of proving contribution for this marital exclusion for one-half of the value of the property, up to a maximum of \$200,000. Rather, it appears that it intended to assure that surviving spouses be allowed to exclude from gross income, that which was his or hers originally and also, in addition thereto, the said marital provision. The rules of construction of statutes are inapplicable when a statute is plain on its face, the legislative intent being the paramount consideration. State v. Ross, Del. Gen Sess., 50 A.2d 410.

We concluded and hold that Petitioners may exclude from the gross estate that property which originally belonged to the surviving tenant and also may exclude from the gross estate one-half of the joint property up to \$200,000 in value as being an additional exclusion for the surviving spouse. Therefore the Director of Revenue was in error when he made the additional assessment against

the Estate in the amount of \$3,449.12 and also assessment interest in the amount of \$413.89. Accordingly, we reverse said decision of the Director of Revenue.

IT IS SO ORDERED.

Joseph S. Guebt
James J. Kelly
Thomas P. Kelly
Harold P. Kelly
Joseph P. Kelly

Dated: December 11, 1981

SYNOPSIS

DOCKET NO. 715

TAX SEGMENT: INHERITANCE TAX

ISSUE: Whether surviving spouse of decedent can take an exclusion or deduction on both actual contribution and on the presumed share of remaining items from the gross estate held in joint tenant with the decedent.

TAB DECISION: The Tax Appeal Board concluded that Petitioners may exclude from gross estate that property which originally belonged to the surviving tenant and may also exclude from the gross estate one-half of the joint property up to \$200,000 in value as being and additional exclusion for the surviving spouse.

DECISION: For Petitioners

DECISION DATE: December 11, 1981

APPEALED TO SUPERIOR COURT -(C. A. 82A-JA-3)

DECISION: For Respondent - Decision of Tax Appeal Board reversed.

DECISION DATE: August 24, 1982